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February 7, 1995

HAND DELIVERED

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: REPLY COMMENTS ON NOTICE OF PROPOSED RULEMAKING
IN MM DOCKET NO. 94-131 & PP DOCKET NO. 93-253

Dear Mr. Caton:

Transmitted herewith are an original and 14 copies of the Reply Comments of American Telecasting, Inc. submitted in response to the above-referenced Notice of Proposed Rulemaking.

Please contact the undersigned if additional information on these comments is desired.

Respectfully submitted,

Thomas J. Dougherty, Jr.
Lauren S. Drake
Counsel for
American Telecasting, Inc.

cc: Hon. M. Reed Hundt
Hon. James H. Quello
Hon. Andrew C. Barrett
Hon. Susan Ness
Hon. Rachelle B. Chong
Mr. Blair Levin
Ms. Pete Belvin
Mr. Keith Townsend
Ms. Jane Mago
Mr. James L. Casserly
Ms. Barbara Kreisman
Mr. Robert M. Pepper
Ms. Sharon Bertelsen
Ms. Jerianne Timmerman

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 21 and 74 of the	)	
Commission's Rules With Regard to	)	MM Docket No. 94-131
Filing Procedures in the Multipoint	)	
Distribution Service and in the	)	
Instructional Television Fixed Service	)	
	)	
and	)	
	)	
Implementation of Section 309(j) of the	)	PP Docket No. 93-253
Communications Act-Competitive Bidding	)	

Directed To: The Commission

REPLY COMMENTS OF AMERICAN TELECASTING, INC.

AMERICAN TELECASTING, INC.

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February 7, 1995

SUMMARY

American Telecasting, Inc. ("ATI"), the nation's largest wireless cable operators, hereby submits its Reply Comments in Response to the Notice of Proposed Rule Making in MM Docket No. 94-131.

ATI reiterates its opposition to an area-based licensing scheme. Such an allocation system is incompatible with existing wireless cable systems. ATI also restates its support of a "first window" filing approach whereby only those entities with access to at least nine MDS/ITFS channels would be eligible to participate. Moreover, ATI supports the expansion of the wireless cable protected service area, but only after the close of the "first window."

With respect to auction issues, ATI does not believe there should be any preference for rural telephone companies and supports the Wireless Cable Association's definition of a "small business."

Finally, ATI strongly opposes the concept of forced carrier offset. This proposal would delay indefinitely the deployment of digital modulation in some markets. ATI believes that any rules adopted as a result of this proceeding must be designed to aid the further development and success of the wireless cable industry.

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Directed To: The Commission

REPLY COMMENTS OF
AMERICAN TELECASTING, INC.

AMERICAN TELECASTING, INC. ("ATI"), by its counsel an pursuant to Rules 1.415 and 1.419, hereby submits the following comments in reply to the comments submitted in response to the Notice of Proposed Rulemaking (the "NPRM") released on December 1, 1994 in the above-captioned dockets (FCC 94-293).

I. ALTERNATIVE ALLOCATION SCHEME PROPOSALS

A. Introduction.

The comments of the Wireless Cable Association, Inc. ("WCAI") and experienced wireless cable operators uniformly oppose any sort of allocation scheme that uses geographic boundaries, such as MSAs and ADIs. Similarly, those commentators oppose taking the MDS transmitter site selection discretion from the operator and giving it to the Commission. After reviewing those comments, we remain convinced that alternative allocation schemes are, at this

late date, attempts to place the square peg in the round hole. The concept of the Commission selecting the site is universally opposed. The Commission lacks the resources to make site selection decisions for wireless cable operators. A few commentators would prefer an area-based licensing scheme. But, as explained below, their attempts to support such licensing schemes are amiss.

B. dLR's "Allotment" Scheme Does Not Fit the Industry.

du Treil, Lundin & Rackley, Inc. ("dLR") argues that the Commission should adopt an allotment scheme somewhat like that used for the FM and television broadcast services. Under dLR's approach, the Commission would allot channels so that cochannel stations would be separated from one another by at least a certain distance.

There are four problems with this approach. First, it ignores that wireless cable operators have already decided where they want their transmitter sites based upon a whole host of *ad hoc* business considerations. This scheme would substitute the Commission's judgment for the marketplace-sensitive judgment of those who have made in an investment in the industry. Second, the allotment approach suggested by dLR fails to consider whether ITFS channels can be collocated with the channels subject to allotment. The collocation of the ITFS and MDS channels is essential for the wireless cable operator. Third, the Commission would face a monumental task in deciding upon the site locations for allotted channels. Indeed, the Commission would be required to look at the location of every D, E, F and G-group ITFS receiver site to ensure that it would be protected. Fourth, an allotment scheme would be inconsistent with the Commission's goal in this proceeding of promoting the similarity in MDS and ITFS application processing. This task of selecting transmitter sites is best left to the business people whose money is at risk.

C. CAI's Request to Evolve to Geographic Area Licensing Is Impracticable.

CAI suggests that, after the "first window," the Commission adopt the MSA and the Rural Service Area ("RSA") for auctioning the available MDS channels.[1] But, CAI also offers a reason for not adopting the suggestion; that is, "wireless cable operators have developed markets and not geographic areas."[2] Further, we do not agree with CAI that "[MSA and RSA] designations best conform to industry practice." ATI discussed the problem of geographic boundary licensing for MDS at length in its comments, and offers a further elaboration of the inappropriateness of the MSA/RSA concept in **subsection D**, below.

D. The Rural Wireless Cable Coalition's RSA/MSA Licensing Scheme Does Not Fit Wireless Cable.

The MSA/RSA approach is, as stated in ATI comments, another inappropriate means to license MDS channels. Like any area-based licensing approach, it has no correspondence to where wireless cable operators would place wireless cable systems. It is a superimposition, at too late of a date, of an allocation scheme designed for a radio service lacking the characteristics of wireless cable.[3] Indeed, while proposing MSA/RSA as the area-based licensing concept, the

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[1] CAI Comments, at 5.

[2] Id.

[3] The MSA/RSA approach was designed for cellular mobile radio and implemented in geographic areas *before the acceptance of applications* for service in those areas. Thus, past licensing decisions did not limit the usefulness of the approach in cellular mobile radio. More importantly, the approach fits the type of service. The hallmark concept in cellular mobile radio service is seamless coverage across the United States. The reason for that orientation is that cellular radio is a *mobile* service. The MSA/RSA concept worked for cellular because it divided the entire country into small pieces, most of which could support a cellular operation. Presumably, all of the country can be served under this approach because a cellular operator can add transmitter sites within its MSA or RSA until the entire MSA or RSA is covered with a reliable service area contour. Wireless cable service does not depend upon any universal availability; indeed, it is foolhardy to attempt to provide wireless cable service at all points or at all households. Moreover, wireless cable systems are largely restricted to one main transmitter site, because the reuse of channels simply is not practicable. Thus, the use of the RSA/MSA to subdivide the country would result in less rather than more wireless cable service.

so-called "Rural Wireless Cable Coalition" recognizes that RSAs can be too large for wireless cable.[4]

E. The ADI Approach to Licensing Is Flawed.

Pacific Telesis and Crowell & Moring urge the Commission to adopt the ADI as the area-based licensing method.[5] Pacific Telesis offers no explanation of why the ADI is the best area-based licensing boundary. Indeed, it offers no reason why area-based licensing could work at this late date. Pacific Telesis is not a wireless cable operator, but a telephone company, and its comments perhaps reflect its operational perspective. Crowell & Moring prefers ADIs because they "reflect a natural video marketplace."[6] To the contrary, as explained in our comments, the ADI is probably the least appropriate boundary that has been proposed for area-based licensing. We observed that ADI's tend to be over 7 times the size of the current wireless cable protected service area.[7] They are designed for TV advertising measurement purposes and, unlike wireless cable, the signal of TV stations and hence the size of ADIs owes much to the cable carriage of TV signals.

II. "FIRST WINDOW" PROPOSALS

A. Introduction.

The vast majority of the comments submitted in this proceeding support the concept of a "first window" open only to those who have a certain "critical mass" of MDS/ITFS channel

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[4] Rural Wireless Cable Coalition Comments, at 10. The "Coalition" is composed of 5 telephone companies who appear to be newcomers to wireless cable. Their comments do not state that they are operating wireless cable systems or that they have taken any steps toward developing any wireless cable systems.

[5] Pacific Telesis Comments, at 2; Crowell & Moring Comments, at 6.

[6] Crowell & Moring Comments, at 6.

[7] ATI Comments, at 18.

rights. Each commentator, however, had at least a slightly different version of the "first window."

After considering the comments supporting a "first window," ATI continues to support its approach. To reiterate our comments, our "first window" proposal would limit first window eligibility to filers having access by lease or license to nine or more licensed or permitted MDS/ITFS channels in a market that will be used with the newly requested MDS channels, regardless of the size of the market.

As explained in our comments, the number nine is not arbitrary. Rather, it promotes many valid and important objectives of this proceeding.[8] The primary benefit of that number is its ability to separate those who have made a commitment to wireless cable service from those whose motives are purely speculative.

Unlike some other proposals, our variant would limit the channels in a market that could be counted toward eligibility to those that have been licensed or permitted. Thereby, determining "first window" eligibility is simple and immune to the risks of future events.

While our approach to the "first window" is not a perfect way to divide those who have made a commitment to wireless cable service from those who are newcomers or who are speculators, what it lacks in precision is more than offset by its simplicity, ease of administration and ability to allow the rapid licensing of "first window" filers.

Lest there be any question of our need for these additional channels, ATI is willing to accept a strictly enforced 12 month construction requirement for the newly licensed MDS channels.

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[8] ATI Comments, at 13.

In the following paragraphs of this Section we present an analysis of those different approaches to the "first window" concept. This analysis is presented to assist the Commission in understanding the relative benefits of ATI's approach.

B. The MSA v. Rural Distinction.

It has been suggested that the Commission require a "critical mass" of 20 MDS/ITFS channel rights for those filing for transmitter sites in a MSA or within 15 miles of the border of a MSA (a "MSA Area"). For transmitter sites more than 15 miles from any MSA (a "Rural Area"), the suggestion is a "critical mass" of 12 channels. Channels that could be counted toward the "critical mass" would include those MDS channels requested by the filer in the "first window," but a Rural Area filer would have to have prior access to at least 4 authorized MDS/ITFS channels.

We do not regard the concept of a rural v. urban distinction as the best means of implementing a "first window." We believe the concept could be abused by speculators, filing mills and scam artists. The "rural" definition largely describes the applications proposed by filing mills, because it uses a definition of rural which is virtually identical to the site restrictions under which the mills filed MMDS applications. By public notice issued on April 20, 1988, the Commission lifted the freeze on the acceptance of new MMDS station applications, but limited new MMDS station applications to those proposing transmitter site locations which are at least 15 miles from the border of any MSA having a licensed or proposed MMDS station as of April 20, 1988.[9] The filing mills went into the MMDS application business because of the release of

[9] This public notice also required new station applications to propose transmitter sites that are at least 50 miles from the transmitter sites proposed in applications or licensed to stations on April 20, 1988.

that public notice. Thus, a majority of the mass-filed applications propose places which would qualify as "Rural Areas."

This MSA/Rural area distinction could be used by filing mills to solicit new application business from their past clients who received MMDS licenses in "Rural Areas." In making their solicitations, they would be able to urge that rural MMDS licenses have been given a preference by the Commission because the Commission recognizes the value of wireless cable in rural areas. If that sounds familiar, it is because that is the same pitch mills used in the past to solicit application filers. That pitch also was used by the securities scam artists to attract their investors.

But, it is true that the Rural Area concept would give mass filers an advantage over legitimate MSA Area filers. Rural Area filers would be required to have access only to 4 authorized channels, and would be allowed to make up the remaining 8 in their applications. But, a MSA Area filer could not participate in the "first window" unless it had amassed rights to many more channels than the Rural Area filer must secure. In our opinion, that result would not be fair. Moreover, it would tend to prefer lightly populated areas over densely populated areas in conferring wireless cable's benefits of competition to entrenched cable. We would view the reverse tendency as more consistent with the Commission's goals in this proceeding.

We also are concerned that the Rural Area proposal would support the securities scam artists, many of whom are related to or have operated application filing mills. Under our proposal, the securities scam artist would need 9 authorized channels in a market to participate in the "first window." As explained in our comments, the scam artists will have a difficult time finding 9 authorized channels in a market.[10] The Rural Area proposal would let these people

[10] ATI Comments, at 14-15. This point is discussed in greater depth in Appendix A to ATI's Comments.

participate with just 4 channels and it would be quite easy for the scam artists to find 4 channels in many markets.

Moreover, the Rural Area proposal would allow the scam artists to locate MMDS licenses authorizing transmitter sites just over 15 miles away from many MSA areas.[11] Those licenses will give them the eligibility they need to propose new MDS stations which transmit signal right into MSAs. They will be able to attract phenomenal amounts of investor money based upon their apparent preference for new MDS channels and their ability to directionalize signal into MSA areas. In the end, the scam artist makes millions of ill-gotten money, the MSA-based wireless cable operator is deprived of the MDS channels it very dearly needs and the scammed investors are left with very little for all their invested money. This is the prospect about which ATI warned in its comments.[12]

The unfortunate results of the Rural Area proposal could be exacerbated by pending proposals to expand and to refine the protected service area prior to the "first window." Implementing that proposal would allow the Rural Area scam artists to claim an even larger service area and to prevent the grant of even more legitimate MSA Area proposals.

Finally, we do not believe that there is sufficient reliability in the factual assumption used to support the rural v. urban distinction, that only 12 channels are required to compete in a rural area and 20 channels are required to compete in an urban area. The idea that only 12 channels are required to compete in a rural area is a simplification of the idea that 12 channels are enough

[11] As stated above, the mass-filers proposed those stations at points at least 15 miles from MSA areas because of the Commission's filing requirement. And, typically, they placed the proposed transmitter site as close to that 15 mile contour as possible to maximize household coverage.

[12] ATI Comments, at 8-12.

to offer an attractive programming package in areas where there is no cable TV alternative or a cable TV system that has even more limited channel capacity. When we decide whether to provide wireless cable service in a market, we do not focus upon whether the market s rural or urban, but upon a whole host of factors (particularly, the service areas, service prices and channel offerings of competitors) which having nothing to do with any rural/urban distinction. Indeed, we often find that cable penetration increases as one moves from an urban area through the suburban fringe to the far suburbs of an area. This is not surprising, but reflects the history of cable as a means of extending TV coverage to more remote areas. In our experience, there are not many places where there is no cable TV service that could support a wireless cable system, and those uncabled areas are shrinking in size daily. Further, while we might launch a wireless cable operation with 12 or even less channels, we would do so only with a plan to expand the number of channels in the near term.

C. Large/Small Market Dichotomy.

Another commentator suggested a system for "first window" eligibility which would distinguish between rural and urban markets by number of line-of-site households. A transmitter site that would provide line-of-site service to at least 140,000 households would be a "large market" transmitter site which cannot be employed as the transmitter site for new MDS stations unless the filer would have access to at least 20 MDS/ITFS channels at that site (counting channels sought in the window). A transmitter site which "sees" less than 140,000 households could be used by a "first window" filer if that filer would have access to 12 MDS/ITFS channels at that site (again, counting the channels sought in the window).[13]

[13] CAI Comments, at 3.

This urban v. rural dichotomy shares all of the problems possessed by the MSA Areas v. Rural Areas approach, and adds the difficulty of counting households. How many households are seen by a transmitter site is not just a function of transmitter site location, but involves many more variables such as height of transmission antenna, transmission antenna pattern, orientation of the main lobe of transmission antenna radiation and E.I.R.P. Thus, the line-of-site system would bog down the Commission in a labor intensive review of site data, shadow data, census tract data and tree-blockage issues. To avoid abuse,[14] the Commission would probably find it necessary to specify standard facilities at each transmitter site or a "minimum" facilities standard that would apply nationwide. The former specification would a labor-intensive burden and would inherently be arbitrary. The later means reduces the burden, but only at the cost of magnifying the arbitrary nature of the results. Finally, 140,000 households is not recognized by the industry for any purpose, let alone the line dividing urban and rural markets.

D. Counting Unlicensed Channels Presents Efficiency Problems.

A few commentators proposed allowing entities to count applied for, but unlicensed, channels in reaching the "critical mass" of channel rights they would require to participate in the "first window" in a market.

ATI would give no weight to such channels, because it is not at all certain that such channels will be authorized until after they are authorized. Even though an application may be cut-off from competing filings and may not be subject to any protest, there is no assurance that

[14] For example, one applicant might propose an antenna centerline **10 feet** above ground level which will see less than 140,000 households, while another applicant might propose a **realistic** antenna at the transmitter site that would see more than 140,000 households. The former applicant would be required to have prior access to only **4 channels**, while the later applicant would be required to have prior access to as much as **3 times** that number. Yet, both propose the same transmitter site.

the application is not defective because of unknown interference to facilities or other reasons. Indeed, to give a filer credit for channels represented only by a pending, cut-off application is to imply that the remaining processing function of the Commission is no more than a ministerial rubber stamp. In our experience, all stages of the Commission's processing function are critical to the decision as to whether an application is granted.

We believe that counting pending applications would put the Commission in the burdensome position of being forced to process the pending application before awarding the new MDS station licenses for which the filer became eligible by reason of the pending applications. If one of the eligibility-creating applications were returned, then the MDS license could not be issued to the filer. If one of the eligibility-creating applications were designated for hearing, then the newly sought MDS channel license would be placed in regulatory limbo for the duration of the hearing. In either case, the Commission would be tying the new MDS channel to an uncertain fate.

We are also concerned that counting pending applications for unauthorized stations would create an incentive for speculators to rush to obtain ITFS lease agreements just so as to preserve a filing opportunity they otherwise would not have actively pursued.

E. There Is No Reason to Exclude Licensees from the "First Window."

United States Wireless Cable, Inc. ("USWC") requested the Commission to count only lease interests toward the "critical mass" of channels that would be required to participate in the "first window."[15] We understand that USWC will drop this proposal, based upon the agreement of its counsel. Nonetheless, we want the Commission to understand why we believe that

[15] USWC Comments, at 6.

USWC's proposal is without merit. Whether an entity has access to a MDS channel by license or lease is no indicator of whether the entity will be the wireless cable system operator of the channel. Indeed, ATI *prefers* to be the licensee, and we do not believe that anyone would suggest that we are not a serious wireless cable operator.

F. The Few Who Are Against the "First Window" Are Either Against Wireless Cable or Offer No Support for Their Opposition.

Two application filing companies argue against a "first window" concept, Dalager Engineering Company ("DEC") and The Richard L. Vega Group ("Vega"). The Commission should bear in mind that both of these commentators make their money from application filing activity. For them, the "first window" is far cry from the flood of post April 20, 1988 MMDS applications that propelled their profits.

But, quite aside from their biases, these commentators offer no valid reasons against a "first window."

Vega asserts that a first window "is seriously prejudicial and jeopardizes the potential of new and better concepts being introduced to the MDS industry."[16] But, he does not explain why existing wireless cable operators are less able than others with fewer channels to offer these unidentified "new and better concepts...." Vega reiterates that the first window "eliminates the ability of new, more innovative and competitively based services from being introduced to the market."[17] But, how? Vega does not explain or support his contentions. Vega concludes by stating that wireless cable will not offer competition to cable; that DBS and 28 GHz systems will offer that competition. That bare conclusion, however, is directly contrary to our experience.

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[16] Comments of Vega, at 9.

[17] Id. at 10.

We compete directly with cable TV and we are adding subscribers daily. During the last 3 months of 1994, ATI alone added 12,000 subscribers without acquiring any wireless cable systems. If we do not offer competition to cable, then why are subscribers flocking to us?

DEC does not like the "first window" proposal for the simple reason that "individuals have been patiently waiting for the filing window to open so they can file in an area."[18] While that may be true, it does not address the more important issues of public interest priorities, the prevention of filing mill and scam artist abuses, and the pressing need to give real wireless cable operators desperately needed channel relief.

III. ABUSE-PREVENTION ISSUES

A. Introduction.

The Commission's experience with MDS and ITFS is one which, in the last 6 years, has an incidence of application filing abuses which is unacceptable. To control such abuse, we believe that it is necessary for the Commission to anticipate forms of abuse and to give notice that the identified abuses will not be tolerated. We believe that measures which foreclose abuse opportunities also should be adopted. Set forth below are discussions of two types of application abuse which can be easily avoided.

B. Avoiding the ITFS Rogue Receiver Problem.

It is important that filers not be thwarted by rogue ITFS receiver sites which exist for the purpose of blocking adjacent channel MDS applications. The practice of proposing receiver sites just to block new filings is an all too common practice in ITFS, as acknowledged by the Commission in paragraphs 26 and 27 of its Order and Further Notice of Proposed Rulemaking,

[18] DEC Comments, at 2.

59 Fed. Reg. 35665 (rel. July 6, 1994 in MM Docket No. 93-24). It is a simple and effective practice. Any ITFS licensee or permittee seeking to block a MDS application can simply add an authorized receiver site at a location near the expected transmitter site of the MDS station. Such a receiver site, if it is a receiver site of channels adjacent to MDS channels, most likely would receive unremediable adjacent channel interference from the MDS station.

This practice can be stopped if the Commission would acknowledge that whether a receiver site should be protected from interference should be determined by the receiver site and not by the ITFS licensee. Thus, if the person controlling a receiver site gives the Commission a letter waiving interference protection, then interference at that receiver site should not be erected as a barrier to the grant of an application.

C. There Should Be a Minimum Assumed E.I.R.P. to Avoid Auction Abuse.

Filing mills have been able to propose extremely low power stations--indeed, useless station designs--to fit stations in places where interference protection requirements would not allow standard 10 to 50 watt transmitter power output ("TPO") stations. In addition, filing mills have used highly directional antenna designs for that purpose. The stations proposing those designs are not economically feasible; they are not designed with economic feasibility in mind.

Such designs could be used by securities scam artists and filing mills to evade the auction process. For example, a station could be proposed which directionalizes signal toward a desert area or National Forest area and proposes 1 watt TPO. Such a station probably would not cause interference to other proposed MDS stations. Thus, if the filer of such an application were willing to accept interference from other proposals, then such an application would not be mutually-exclusive and would be granted outside of the auction procedure.

Not only does such a practice avoid auctions, it wastes the Commission's staff resources processing useless applications and presents legitimate licensees with nearby, authorized proposals that will block facility modification applications.

We suggest that the Commission address this problem by assuming, for interference calculation purposes, that all MDS applications propose at least 10 watts TPO and no more than the amount of line loss required by combiners and the wave guide. Further, directionalized antennas should be assumed to have a beamwidth of no less than 180 degrees (i) unless required to avoid spilling signal wastefully over large bodies of water, or (ii) unless the proposed station will be used with existing channels that are operating in service of subscribers with a narrower beamwidth antenna, in which case the actual antenna beamwidth of the collocated stations would be used.

IV. WHEN SHOULD THE PROTECTED SERVICE AREA BE CHANGED?

ATI's comments suggest adopting the WCAI's proposal to expand and refine the wireless cable protected service area (the "PSA"), but *after* the close of the "first window."[19] A couple comments suggest that the WCAI's PSA proposal should be implemented before the "first window." We find those comments unpersuasive.

The comments of Dalager Engineering Company ("DEC"), perhaps, best summarize the reason for ATI's proposed timing on this issue:

> "it would be difficult with so many systems either about to be built, in the process of being built, or already built. My fear is that systems partially built could be inadvertently blocked forever from increasing power or adding channels. We are way too far along in the game to change the interference rules."[20]

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[19] ATI Comments, at 23.

[20] DEC Comments, at 2.

Our request to expand and to refine the PSA after the close of the "first window" is not an original idea. Rather, the Commission did virtually the same thing in the cellular mobile radio service. In CC Docket 90-6, the Commission awaited the licensing of all MSA and RSA cellular systems and *then* expanded the reliable service area contour of cellular systems by dropping the field strength contour for service from 39 to 32 dBu.[21] As a result, the reliable service area contour of existing cellular system transmitters increased by 40 %. The net effect of this change was to shrink or to eliminate many of the unserved cellular areas which, in turn, eliminated speculative filing opportunities for the filing mills.

We do not dispute that the PSA is artificial and should be revised so that channels are given protection in the area where they can offer service. We support the WCAI's PSA refinement and expansion request, but we urge its adoption at the proper time. Our point is that it is senseless to deprive systems that have been built or have been planned based upon existing interference rules of additional channels just because the channels can provide service at greater distances from the transmitter than the existing PSA would suggest.

V. AUCTION ISSUES

A. There Is No Reason to Prefer Rural Telephone Companies.

Of all the comments filed, only one set of comments mentioned the role of rural telephone companies in wireless cable. Five rural telephone companies have joined together in what they call the Rural Wireless Cable Coalition (the "Coalition").

The Coalition requests a spectrum set-aside preference for rural telephone companies. It relies for its requested preference upon an objective of the auction statute to promote the

[21] Memorandum Opinion & Order on Reconsideration, 58 Fed. Reg. 11799 (Mar. 1, 1993).

"accessibility of new technology to the public ... by disseminating licenses among a wide variety of applicants ... including rural telephone companies...."[22] The Coalition's reason for deserving the preference is that rural telephone companies "are the only entities in those regions with the ability and desire to promptly offer wireless cable service...."[23]

But, if, as the Coalition says, the rural telephone companies are the only ones who will offer service in these rural areas, then there is no reason for the Commission to give the rural telephone companies any preference.

Indeed, the Coalition presents no reason why any promotion of rural telephone companies is required for them to participate in wireless cable and, even if such promotion were required, why it is needed to promote the "accessibility of new technology to the public." Apparently, the Coalition never heard of RuralVision. Apparently, the Coalition also does not know that wireless cable service was first offered in rural areas. Moreover, if rural telephone companies are the sole providing source for rural areas, then why are they not actively pursuing ITFS excess capacity lease agreements and assisting the licensing of educators so that they can participate in a window of those who have access to a critical mass of channels? It could not be for financial reasons, because these rural telephone companies would receive no subsidy to build or operate wireless cable systems.

B. We Support the WCAI's "Small Business" Definition.

The WCAI and the "Wireless Cable Operators" suggest that the Commission allow "designated entities" to make installment payments on winning bids.[24] They differ in their

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[22] Comments of Coalition, at 3 (citing 47 U.S.C. § 309(j)(3)).

[23] Id. at 4.

[24] WCAI Comments at 58-63; Wireless Cable Operators Comments, at 21-24.

proposed definition of "small business." The Wireless Cable Operators would limit small business designation to those with no more than a $6,000,000 net worth and no more than $2,000,000 in after-tax profits in any of the two previous years.[25] The WCAI, on the other hand, would employ the narrowband PCS definition, which would limit small business qualification to those having no more than $40,000,000 average gross revenues in the last three years.[26]

We believe that the WCAI's definition better fits our industry. In defining "small business," the Commission has focused upon the capital requirements to build the auctioned facilities.[27] The WCAI is correct in its observation that the capital requirements for wireless cable exceed those for narrowband PCS. The cost of the wireless cable headend, alone, is approximately $1,000,000 to $2,000,000. The cost incurred to add a subscriber will average about $500. Thus, the cost to build a wireless cable system to 10,000 subscribers is approximately $6,000,000 to $7,000,000. If the costs to build out a narrowband PCS system are, as stated by the Commission, between $50,000 and $1,250,000, then the definition of "small business" used for the narrowband PCS auctions should not employ a higher dollar ceiling than the definition used for MDS auctions. At a minimum, the PCS definition should be used in the MDS auction context.

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[25] Id. at 21 n.22.

[26] WCAI Comments, at 61-62.

[27] Third Memorandum Opinion and Order, FCC 94-219, at §§ 42-46 (rel. Aug. 17, 1994) (PP Docket No. 93-253).

VI. APPLICATION PROCESSING IMPROVEMENTS.

A. Access to Accurate Engineering Data.

When the first window opens, ATI and others who have dedicated themselves to the wireless cable industry must plan their filings. In doing so, they will be concerned primarily with the issue of whether the available MDS channels in a market **can be licensed** at the operator's transmitter site with facilities identical (other than in frequency) to the facilities the operator uses from that site. Absent that assurance, a legitimate operator cannot dedicate the money required to purchase the channels at auction.

It is, thus, imperative that filers have access to the data base used by the Commission, as suggested by Hardin & Associates.[28]

B. The Additional ITFS Protest Period Provides No Benefit and Slows Licensing.

The Commission currently gives ITFS permittees and licensees a total of 120 days after public notice of a MDS application to file an interference protest against the application. That period is 4 times the protest period granted to any one in any other radio service. We agree with Hardin & Associates[29] that there is no reason why an ITFS licensee or permittee cannot, within the normal 30 day petitioning period, complete a determination of whether a MDS proposal would cause it interference and, if interference is predicted, file a petition to deny.

Moreover, we have not seen the increase in ITFS entities filing protests based upon interference grounds that one would expect if their expanded petitioning period actually helped them protect their facilities. The net result of the 120 day ITFS protest period is that MDS

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[28] Comments of Hardin & Associates, at 10.

[29] Id. at 9-10.

applicants must wait longer to implement their service plans. That result is contrary to the purposes of the NPRM.

C. Mandating Involuntary Carrier Offset Would Be a Major Mistake.

Hardin & Associates, Hammett & Edison, Inc. and Marshall Communications, Inc. request the Commission to adopt a rule allowing the grant of applications proposing as little as 35 dB of desired-to-undesired signal ratio to previously proposed or authorized stations, in lieu of the required 45 dB, if the applicant will pay the cost to install carrier offset equipment.[30]

We **vehemently oppose** this concept of forced carrier offset for a couple reasons. First, it assumes that precisely controlled carrier offset is equivalent to 10 dB or more of protection. That assumption might be correct, but it is not generally accepted. Second, carrier offset's benefits disappear once any one of the carrier offset stations attempt to convert to digital modulation techniques. This proposal would delay indefinitely the deployment of digital modulation in some markets.

[30] Comments of Hardin & Associates, at 10; Comments of Marshall Communications, Inc., at 3-4; Comments of Hammett & Edison, Inc., at 4. Hammett & Edison would allow carrier offset in lieu of up to 17 dB of D/U ratio.

VII. CONCLUSION

WHEREFORE, the foregoing premises considered, ATI respectfully requests the Commission to promulgate rules in this proceeding consistent with and as recommended in its initial comments and in these reply comments.

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